

OCA 88-0344

OFFICE OF CONGRESSIONAL AFFAIRS

Routing Slip

	ACTION	INFO
1. D/OCA		
2. DD/Legislation		
3. DD/Senate Affairs		
4. Ch/Senate Affairs		
5. DD/House Affairs		
6. Ch/House Affairs		
7. Admin Officer		
8. Executive Officer		
9. FOIA Officer		
10. Constituent Inquiries Officer		
11. 	X	
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SUSPENSE

PRIOR 12 FEB

Date

Action Officer:

STAT

Remarks:

Action completed

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Name/Date

NO connect given

to

C/BD

OCA FILE Annual Report (Aler)
FOIA

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

STAT

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Annual Report to Congress on our FOIA Performance

FROM:

DC/ISD/MG/OIT

EXTENSION

NO.

OCA 88-0344

DATE 5 February 1988

STAT

TO: (Officer designation, room number, and building)

DATE

RECEIVED

FORWARDED

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1. OCA
Attn:
7B14 HQS

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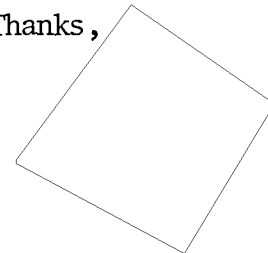
13.

14.

15.

Attached for your coordination is our Annual Report to Congress for 1987. As in years past, I will appreciate your coordinating by phone prior to 12 February, since we must have the report on Mr. Huffstutler's desk for signature by 15 February. The report is due in Congress 1 March.

Thanks,



STAT

Central Intelligence Agency



Washington, D. C. 20505

The Honorable George Bush
President of the Senate
Washington, DC 20510

Dear Mr. President:

Submitted herewith, pursuant to the provisions of 5 U.S.C. §552(d), is the report of the Central Intelligence Agency concerning its administration of the Freedom of Information Act (FOIA) during calendar year 1987.

This year we continued our record of achievements notwithstanding a notable increase in requests received and the demands imposed by other legislative and executive requirements. In particular, a key element in our present as well as future progress was the merger of our FOIA and classification review staffs into one unit, responsible to one manager, which has served to centralize and expedite the processing of all categories of requests. The results of this merger and our commitment to efficient processing of information requests is demonstrated by our present median response time of 1.49 months which compares very favorably with the 3.24 months reported for 1986, and which is a considerable improvement over the 9.2 months reported in October 1985, when this calculation was first made. The results of our efforts to complete the older cases have also been gratifying; only 125 of the cases received before 1986 remain in process. All 1975, 1976, and 1977 cases have been completed, and only two 1978 and six 1979 cases remain open. These are massive, but we hope to complete them in 1988. In fact, to illustrate the currency of our processing, 74% of our 1987 workload was received during that year.

As noted, new requests increased more than 7% over 1986 (3324 compared with 3094 during the previous year). Of these 3324 cases, 1655 were FOIA requests, 1412 were "my file" requests under the Privacy Act, and 257 were mandatory review requests under Executive Order 12356. In addition to this increase, an additional requirement was the workload imposed on our records officers throughout the Agency by the four separate legal and congressional inquiries relating to the Iran/Contra matter. As would be expected, the only officers qualified to conduct these massive records searches and reviews were those individuals normally responsible for FOIA and Privacy Act matters. And, in many components, those same officers are responsible for the conduct or support of on-going intelligence activities. As a result, our workload increased by 279 cases notwithstanding the fact that we closed 3045 cases. A more detailed tabulation of our workload can be found in Tab A. ✓

Processing of administrative appeals was influenced by the same two factors as were initial requests--increased numbers of new appeals and reduced manpower available to process them. There were 172 new appeals received in 1987; with the completion of 134, we ended the year with 204 open appeals as compared to 166 at the end of 1986. These figures include FOIA, PA, and mandatory review cases, like the initial processing figures cited earlier.

During 1987 our manpower input to FOIA/PA/EO processing was 94 manyears -- a level somewhat below that of recent years for reasons discussed earlier in paragraph three. This continues to represent a significant burden to the Agency in terms of both personnel and funds diverted from our primary mission. This is true for two reasons. First, even with the passage of the CIA Information Act and the exemption of operational files, operational documents found in other files must be reviewed for release by professional officers working on the area concerned. This means that they must be diverted from their intelligence duties to conduct the review. Second, discounting expenditures for space, equipment, and overtime differential, all of which remain high, the expenditure of funds continued at about the same level as in 1986. Since 1975 we estimate that the Agency has spent over \$39.5 million in personnel costs alone for processing information requests -- \$22.9 million for FOIA. Although we are allowed under FOIA to charge fees for records searches and duplication, these fees are inadequate for recovering even a small portion of the costs. The Agency, since 1975, has collected only \$107,723 in fees. When compared with funds expended for administering the FOIA, this continues to represent a return of only one-half cent on the dollar. Because of the fee waiver provisions in the Freedom of Information Reform Act, passed in late 1986, the agency collected only \$2,637 in fees during 1987--about half the amount collected in 1986.

During 1987 we continued to benefit from the effects of the CIA Information Act. First, we have been able to concentrate our efforts more productively on potentially releasable records to the benefit of the requesters. Second, and more importantly, the time formerly spent in searching for and processing sensitive operational files can now be devoted to other requests and to carrying out the Agency's primary missions. We are encouraged by the continued improvement in our processing procedures, which shows in our response time and the currency of our workload, and will make every effort to show further improvement during CY 1988.

Sincerely,

R. M. Huffstutler
Deputy Director
for
Administration

Enclosures

Central Intelligence Agency



Washington, D.C. 20505

The Honorable James C. Wright
Speaker of the House of Representatives
Washington, DC 20515

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Sincerely,

R. M. Huffstutler
Deputy Director
for
Administration

Enclosures

FREEDOM OF INFORMATION ACT
ANNUAL REPORT TO THE CONGRESS FOR THE YEAR 1987

1. Total number of initial determinations not to comply with a request for records made under subsection 552(a): 702

There were 594 other FOIA cases in which the requesters were neither given access to nor denied the records sought. None of these cases was regarded as a denial, however, inasmuch as the Agency was either prepared to act upon the request or there proved to be no records to act upon. Accordingly, these 594 have not been included in the 702 figure provided in answer to question No. 1 above. In 119 instances, our searches uncovered no records relevant to the request. In 4 other cases, we found no CIA-originated records, but did locate in our files pertinent documents created by another agency, which were subsequently referred to the agency of origin for review and direct response to the requesters. There were 120 instances in which the information requested was not related to the CIA's activities, and the requester was thus referred to the agency or agencies having cognizance over the records. In 2 cases, requesters appealed on the basis of our failure to respond within the statutory deadline; in another 4 cases, the requesters chose not to exercise their right to administrative appeal and went directly into litigation for the same reason. In each of these instances, therefore, the initial processing of the requests progressed into the Agency's appellate or litigation channels. Eight requests were withdrawn by the requesters after processing had commenced, but before action on them could be completed. Finally, 337 cases were canceled by the Agency because of the failure of requesters to respond to letters asking for clarification, additional identifying information, notarized releases from third parties, fee payments, fee deposits, or written commitments that all reasonable search and/or copying fees would be paid, etc.

2. Authority relied upon for each such determination:

(a) Exemptions in 552(b):

<u>Exemption involved</u>	<u>Number of times (i.e., requests) invoked</u>
(b)(1)	628
(b)(2)	3
(b)(3)	613
(b)(4)	4
(b)(5)	22
(b)(6)	33
(b)(7)	5
(b)(8)	0
(b)(9)	0

(b) Statutes invoked pursuant to Exemption No. 3:

<u>Statutory citation</u>	<u>Number of times (i.e., requests) invoked</u>
50 U.S.C. 403(d)(3) and/or 50 U.S.C. 403g	613

(c) Other authority: None

3. Appeal Determinations:

(a) Total number of administrative appeals from adverse initial decisions received in 1987 made pursuant to subsection (a)(6): 143

(b) Number of all appeals closed in 1987 in which, upon review, request for information was granted in full: None

(c) Number of all appeals closed in 1987 in which, upon review, request for information was denied in full: 60

(d) Number of all appeals closed in 1987 in which, upon review, request was denied in part: 15

4. Authority relied upon for each such appeal determination:(a) Exemptions in 552(b):

<u>Exemption invoked</u>	<u>Number of times (i.e., appeals) invoked</u>
(b)(1)	70
(b)(2)	1
(b)(3)	71
(b)(4)	0
(b)(5)	4
(b)(6)	5
(b)(7)	5
(b)(8)	0
(b)(9)	0

(b) Statutes invoked pursuant to Exemption No. 3:

<u>Statutory citation</u>	<u>Number of times (i.e., appeals) invoked</u>
50 U.S.C. 403(d)(3) and/or 50 U.S.C. 403g	71

5. Names and titles of those persons who, on appeal, were responsible for the denial in whole or in part of records requested and the number of instances or participation of each:

<u>Name</u>	<u>Title</u>	<u>No. of instances of participation</u>
Donnelly, William F.	Former Deputy Director for Administration	4
Kerr, Richard J.	Deputy Director for Intelligence	26
Hauver, Carroll L.	Former Inspector General	4
George, Clair E.	Former Deputy Director for Operations	52
Hineman, Richard E.	Deputy Director for Science and Technology	5
Doherty, David P.	Former General Counsel	1

6. Provide a copy of each court opinion or order giving rise to a proceeding under subsection (a)(4)(F), etc.: None

7. Provide an up-to-date copy of all rules or regulations issued pursuant to or in implementation of the Freedom of Information Act (5 U.S.C. 552):

✓ Handbook submitted with the 1983 report is still valid. See Tab B for new CFR regulations. STAT

8. Provide separately a copy of the fee schedule adopted and the total dollar amount of fees collected for making records available:

✓ See Tab C for a copy of the fee schedule.

The total amount collected and transmitted for deposit in the U.S. Treasury during 1986 was \$2637.00.

9. (a) Availability of records:

As the CIA does not promulgate materials as described in 5 U.S.C. 552(a)(2) (A)-(C), no new categories have been published.

In the case of each request made pursuant to the Freedom of Information Act, all reasonably segregable portions of records are released.

(b) Costs:

A total of 170,436 actual man-hours of labor was devoted during calendar year 1987 to the processing of Freedom of Information Act, Privacy Act, and mandatory classification review requests, appeals, and litigations. Taking into account leave and holidays, this would equate to approximately 94 full-time personnel. We estimate the average grade for professional employees at GS-12/7, and for non-professional employees at GS-07/6. The funds expended during calendar year 1987 on personnel salaries, if overtime payments are ignored, would thus amount to \$3.2 million. If fringe benefits such as retirement and hospitalization are factored in as amounting to 10 percent of the salaries, the total personnel costs come to \$3.5 million. Of this total, approximately \$2.2 million can be attributed to the Freedom of Information Act.

(c) Compliance with time limitations for Agency determinations:

(I) Provide the total number of instances in which it was necessary to seek a 10-day extension of time: None

The Agency's processing backlogs have been such that in almost all instances the deadlines for responding to requests and appeals expired prior to our actually working on them. We were seldom in a position, for that reason, to assert that any of the three conditions upon which an extension must be based existed. We have, accordingly, explained the problem to requesters and appellants and apprised them of their rights under the law.

(II) Provide the total number of instances in which court appeals were taken on the basis of exhaustion of administrative procedures because the Agency was unable to comply with the request within the applicable time limits: 2

Both actions were brought under FOIA.

(III) Provide the total number of instances in which a court allowed additional time upon a showing of exceptional circumstances, together with a copy of each court opinion or order containing such an extension of time: None

(d) Internal Memoranda: None

Production/Workload Statistics

	<u>FOIA</u>	<u>PA</u>	<u>EO*</u>	<u>TOTALS</u>	<u>%</u>
Workload:					
Cases carried over from 1986	658	341	176	1175	(26.1)
Cases logged during 1987	<u>1655</u>	<u>1412</u>	<u>257</u>	<u>3324</u>	(73.9)
Totals	<u>2313</u>	<u>1753</u>	<u>433</u>	<u>4499</u>	
Actions taken:					
Granted in full	291	376	50	717	(23.5)
Granted in part	294	218	112	624	(20.5)
Denied in full	408	106	55	569	(18.7)
No records found	119	476	0	595	(19.5)
No CIA records found	4	8	0	12	(0.4)
Canceled	337	39	4	380	(12.5)
Withdrawn	8	4	0	12	(0.4)
Referred elsewhere	120	7	1	128	(4.2)
Early appeal	2	0	0	2	(0.1)
Early litigation	<u>4</u>	<u>2</u>	<u>0</u>	<u>6</u>	(0.2)
Totals:	<u>1587</u>	<u>1236</u>	<u>222</u>	<u>3045</u>	(100.0)
Cases carried over to 1988	726	517	211	1454	
Change in workload	+68	+176	+35	+279	(+23.7)

*These are requests processed under the mandatory classification review provision of Executive Order 12356. Most of them are either referrals from the Presidential Libraries or declassification requests from other Federal agencies.